Record

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PARTY GUIDE SUPPLEMENT

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Using this Supplement

The purpose of this supplement is to offer a summary of the most recent developments in the Commission's administration of federal campaign finance law relating to party committees. The following is a compilation of articles from the FEC's monthly newsletter covering changes in legislation, regulation and advisory opinions that affect the activities of party committees. It should be used in conjunction with the FEC's August 2004 *Campaign Guide for Political Party Committees*, which provides more comprehensive information on compliance for party committees.

Advisory Opinions

AO 2004-12
Regional Party Organization Established by State Party Committees

Democrats for the West (DFW), a regional party committee established by the Democratic State party committees of Arizona, New Mexico, Nevada, Colorado, Utah, Wyoming, Idaho, Montana and Alaska (the Participating State Committees), is a state party committee that is affiliated with each of the Participating State Committees.

Background

The Participating State Committees created DFW in order to conduct research, issue and tactical polling, training and periodic conferences among and between the Participating State Committees.[1] DFW may maintain a full-time staff and

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[1] *DFW was established, and will be maintained and controlled, solely by the Participating State Committees. No officer, agent or employee acting on behalf of any other organization, including any other state or national party committee, was involved in the establishment of, or will maintain or control, the organization.*

will incur administrative expenses such as rent, office supplies, computers, etc.

DFW will not disseminate any public communication that expressly advocates the election or defeat of any federal candidate or "promotes or supports or attacks or opposes" any federal candidate. DFW also will not:

- Undertake any other direct electoral activity, including voter registration, voter identification or get-out-the-vote activity;
- Direct, solicit or make any contribution to, or expenditure on behalf of, any federal candidate; or
- Make any transfers or contributions to any federal political committee or party committee other than the Participating State Committees.

Additionally, DFW will not pay for the republication of any campaign materials prepared by a federal candidate or pay for any public communication that refers to a federal candidate within 120 days of an election.

Legal Analysis

State committee status. A "state committee" is defined as the "organization that by virtue of the bylaws of a political party or the operation of state law is part of the official party structure and is responsible for the day-to-day operation of the political party at the state level, including an entity that is directly or indirectly established, financed, maintained, or controlled by that organization, as determined by the Commission." 11 CFR 100.14(a); see also 2 U.S.C. §431(15).

In this case, the Participating State Committees established DFW, and will provide the initial financing for DFW through transfers to DFW's federal account. Further, the Participating State Committees will maintain and control DFW. Accordingly, DFW is a state committee because it is "an entity that is directly or indirectly established, financed, maintained, or controlled by" the Participating State Committees.

As a state committee, the limit on contributions from persons other than multicandidate committees to DFW's federal account is $10,000 per calendar year. 2 U.S.C. §§441a(a)(1)(D) and 441a(f). For multicandidate committees, the limit on contributions to DFW's federal account is $5,000. 2 U.S.C. §§441a(a)(2)(C) and 441a(f).

Transfers. The Participating State Committees, as well as any other national or state Democratic party committees, may make unlimited transfers to DFW because these committees are party committees of the same political party. 2 U.S.C. §441a(a)(4); 11 CFR 102.6(a)(ii) and 110.3(c)(1). As discussed below, unlimited transfers of federal funds between DFW and the Participating State Committees are also permissible because DFW and the Participating State Committees are "affiliated committees." 11 CFR 102.6(a)(i).

Affiliation. Under the Federal Election Campaign Act (the Act), political committees "established or financed or maintained or controlled" by the same persons or group of persons are treated as a single political committee for the purposes of the contributions they make or receive. 2 U.S.C. §441a(a)(5); see 11 CFR 100.5(g), 102.2(b)(1), and 110.3. Because DFW was established by, and will be financed, maintained and controlled by, the Participating State Committees, DFW is affiliated with each one of the nine Participating State Committees.

Attribution of contributions. Contributions to DFW from persons other than the Participating State Committees will be proportionately attributable to each of the nine Participating State Committees. In other words, one-ninth of any contribution DFW receives will be attributable to each of the nine Participating State Committees. Thus, for example, a $9,000 contribution by an individual to DFW would be attributed to *each* of the nine Participating State Committees as a $1,000 contribution, and the same contributor would then be permitted to contribute up to an additional $9,000 of federal funds to one or more of the nine Participating State Committees in that calendar year, provided that the contribution does not cause the individual to exceed his or her biennial contribution limit. 2 U.S.C. §441a(a)(3)(B).

Alternatively, DFW may follow the Commission's joint fundraising rules in order to handle contributions that would cause an excessive contribution to one or more of the Participating State Committees. To do so, the Participating State Committees would need to approve a written fundraising agreement in advance, provide an appropriate fundraising

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notice, distribute the joint fundraising proceeds and properly report the contributions. See 11 CFR 102.17.

Nonfederal funds. DFW may maintain nonfederal accounts and may raise funds for such accounts that are not subject to the limits, prohibitions and reporting requirements of the Act. See 2 U.S.C. §§441b and 441a(a). See also 11 CFR 106.7.

Guests and featured speakers at DFW events. DFW may invite national party officers and employees and federal candidates and officeholders (as well as the agents of any of these) to appear as guests or featured speakers at DFW events. However, the rules applicable in particular circumstances vary. Federal candidates and officeholders may attend, speak at or be featured guests at a DFW fundraising event without restriction or regulation because DFW is a state party committee. 11 CFR 300.64(b). Federal candidates and officeholders are not required to issue any disclaimers during their appearances at such events.[2]

Payment of DFW's expenses. DFW intends to establish separate federal and nonfederal accounts and to allocate the costs of certain federal/nonfederal expenses between these accounts. 11 CFR 102.5 and 106.7(b). When a party committee chooses to allocate its administrative costs,[3] then it must allocate such disbursements according to fixed allocation percentages described in the Commission's regulations. 11 CFR 106.7(d)(2).

A Senate candidate will appear on the ballot in six of the states represented by the Participating State Committees during *each* election year. Thus, according to these fixed allocation percentages, DFW must allocate at least 36 percent of its administrative expenses to DFW's federal account in Presidential election years, and at least 21 percent of its administrative expenses to DFW's federal account in non-Presidential election years. 11 CFR 106.7(d)(2)(i)-(ii).

Salaries and wages, however, may not be allocated. Instead, a party committee must use funds that comply with state law to pay salaries and wages for employees who spend 25 percent or less of their compensated time in a given month on federal election activities or on activities on activities in connection with a federal election. Salaries and wages (including fringe benefits) paid for employees who spend more than 25 percent of their compensated time in a given month on federal election activities or on activities in connection with a federal election must come from a federal account. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. 11 CFR 106.7(d)(1); see also AO 2003-11.

DFW may pay employees who spend more than 25 percent of their compensated work hours in a given month in connection with federal elections using federal funds raised through events where both federal and nonfederal funds are raised when the costs of such events have been properly allocated using the "funds received" method.

Use of polling and research data. DFW may provide its polling and research information to state and local party committees of the Democratic Party at less than the usual and normal fee, or at no charge. 11 CFR 110.3(c)(1). However, if polling and research information is paid for with nonfederal funds, then the information can only be provided to national party committees if the recipients pay DFW the usual and normal fee.

Date Issued: June 14, 2004; Length: 7 pages.

—Amy Kort

AO 2004-20 Connecticut Party Convention Still Considered an "Election"

Despite a change in Connecticut state law, party conventions in Connecticut continue to be separate elections under the Federal Election Campaign Act (the "Act"). As a result, Democratic House candidate Diane Farrell, who did not participate in Connecticut's August 10, 2004, primary, may not accept undesignated primary contributions after May 10, 2004, the date of her Democratic district convention. Likewise, her principal campaign committee, Farrell for Congress (the "Committee"), was not required to file a pre-primary report in connection with the August 10, 2004 primary.

Background

Diane Farrell is the Democratic candidate for the U.S. House of Representatives from Connecticut's 4th Congressional District. The Democratic Party in Connecticut held its convention for the U.S. House on May 10, 2004. The primary elections for all offices in Connecticut were held on August 10, 2004. Since the Democratic Party endorsed Ms. Farrell as its candidate for the 4th Congressional District, and no other member of the Democratic Party met the requirements to challenge her endorsement, Ms. Farrell is the Democratic Party's nominee and her name did not appear on the primary election ballot.

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[2] *See* Explanation and Justification to Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money: Final Rules, *67 Fed. Reg. 49,065, 49,108 (July 29, 2002).*

[3] *Items that may be allocated under section 106.7(d)(2) include administrative costs such as rent, utilities, office equipment and office supplies, except that any such expenses that are directly attributable to a clearly identified federal candidate must be paid only from the federal account. 11 CFR 106.7(c)(2).*

Until January 1, 2004, Connecticut law provided that if a candidate received his or her party's endorsement at the party's convention, and if no other candidate received at least 15 percent of the endorsement vote at the convention, then no primary would be held for that office and the party-endorsed candidate would be deemed lawfully chosen as the party's nominee. In 2003, Connecticut enacted a new law, effective January 1, 2004, that provides for an additional route for a candidate's name to be placed on the primary ballot. The new law permits any registered member of the party, even if that member has not received 15 percent of the endorsement vote at the party convention, access to the primary ballot if they file a petition with signatures of at least two percent of the party members in the state or district (whichever applies) within 14 days after the end of the convention.

Analysis

Definition of "election." The Act and Commission regulations define an "election" to include "a general, special, primary, or runoff election" and "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. §§431(1)(A) and (B); 11 CFR 100.2. The question of whether a particular event meets the definition of "election" is determined by an analysis of state law.

In Advisory Opinion 1976-58, analyzing Connecticut's old law, the Commission determined that party conventions were elections for purposes of the Act. This was because it was "possible under Connecticut law for the convention's 'party-endorsed candidate' to be 'deemed … chosen as the nominee'" if no other candidate received the required percentage of the delegates' votes or filed a "candidacy" for nomination. The Commission noted that in such a case, the endorsement at the convention was "tantamount to a nomination of the candidate," and thus, the party convention had the "authority to nominate" candidates. Therefore, candidates could be involved in two elections during the primary process—the convention and the primary (if necessary)—and could then be entitled to two separate contribution limits.

The new Connecticut law does not materially change this situation for purposes of the Act. The only difference between Connecticut's old and new laws is that there are now two ways (i.e., receiving at least 15 percent of the endorsement vote or filing a petition), rather than one, to challenge the party convention's endorsement. However, under the new law, as under the old law, if no party member challenges the party's endorsement, the party-endorsed candidate will be deemed chosen as the party's nominee solely by virtue of the party's endorsement and without being required to take any additional steps to secure the nomination. Therefore, Connecticut party conventions still have the authority to nominate candidates and thus continue to be elections under the Act. In this instance, no Democratic primary took place for the 4th Congressional District, and, therefore, the only election Ms. Farrell was involved in during this primary process was the May 10 Democratic district convention.

Treatment of undesignated contributions received after the party convention. Commission regulations provide that contributions not designated in writing by the contributor for a particular election are presumed to be made for the next election after the contribution is made. 11 CFR 110.1(b)(2)(ii). Furthermore, "[c]ontributions designated in writing for a particular election, but make after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election." 11 CFR 110.1(b)(3)(i).

Because the Commission has determined that the May 10 Democratic district convention was the only election Ms. Farrell was involved in during the primary season, the Committee must treat undesignated contributions made after May 10, 2004, as contributions to the general election. 11 CFR 110.1(b)(2)(ii). However, the Committee may use contributions raised after May 10 to the extent necessary to retire net debts outstanding. 11 CFR 110.1(B)(3)(i).

Reporting. Under Commission regulations, a Congressional candidate's principal campaign committee must file a pre-election report "no later than 12 days before any primary or general election in which the candidate seeks election." 11 CFR 104.5(a)(2)(i)(A). Because the May 10 convention was an election and no primary was held for the 4th Congressional District on August 10, the Committee fulfilled its pre-election reporting requirement by filing its pre-convention report. The Committee did not need to file a pre-primary report in connection with the August 10, 2004, primary election.

Date Issued: July 20, 2004; Length: 7 pages.

—Elizabeth Kurland

AO 2004-22
Transfers to State Party

U.S. Representative Doug Bereuter, a retiring member of Congress, may make unlimited transfers of campaign funds to the Nebraska State Republican Party (the Party). The Party, in turn, may use these funds to renovate its office building. Under the Federal Election Campaign Act (the Act), transfers to a state party committee are a permitted use of contributions received by a principal campaign committee. 2 U.S.C. §439a.

Background

Representative Bereuter resigned from the U.S. House of Representatives and will not run for re-election. His principal campaign committee, Bereuter for Congress, recently transferred $5,000 from its campaign account to the Party to defray the costs of remodeling the Party's office building. Bereuter for Congress intends to transfer another $10,000 to $15,000 to fund further remodeling.

Analysis

The Act lists four permissible uses for campaign funds and provides that campaign funds must not be converted to the personal use of any individual. 2 U.S.C. §§439a and 439a(b). One permissible use of funds is for unlimited transfers to a state party committee. 2 U.S.C. §439a(a)(4); 11 CFR 113.2(c). These provisions of the Act do not limit the ways that the state party committee can use the funds, nor do they restrict the amount that may be transferred in any specific period of time.[1]

Thus, Bereuter for Congress may transfer $10,000 to $15,000 in campaign funds to the Party for the purpose of remodeling its party headquarters. Any or all of the funds may be transferred before August 31, 2004.

Date Issued: July 23, 2004; Length: 2 pages.

—Amy Kort

AO 2004-25
Senator May Donate Personal Funds to Voter Registration Organizations

U.S. Senator and Democratic Senatorial Campaign Committee (DSCC) Chairman Jon Corzine may donate his personal funds to organizations engaging in voter registration activity, as defined at 11 CFR 100.24(a)(2),[1] without triggering the Federal Election Campaign Act's (the Act) provisions regulating the raising and spending of funds by officers of national party committees and federal candidates or officeholders.[2] Senator Corzine will make the donations solely at his own discretion, without authority from, or on behalf of, the DSCC. He will not donate to organizations that he has directly or indirectly established, financed, maintained or controlled, and he will not exercise any control of how his funds are used by any organization to which he donates.

Status as National Party Committee Officer

The Act bars officers and agents of a national party committee from raising or spending any nonfederal funds (i.e., funds not subject to the limitations, prohibitions and reporting requirements of the Act). 2 U.S.C. §441i(a); 11 CFR 300.2(k) and 300.10. It also restricts national party committees, their officers and agents from raising and spending funds for nonprofit organizations under 26 U.S.C. §501(c) that make expenditures and disbursements in connection with an election for federal office (as well as restricting them from raising and spending funds for certain political organizations under 26 U.S.C. §527). 2 U.S.C. §441i(d); 11 CFR 300.11 and 300.50. The plain language of the Act and the Commission's regulations, however, specifically applies these restrictions to national party committee officers and agents only when such individuals are acting on behalf of the national party committee. See 2 U.S.C. §§441i(a) and (d); 11 CFR 300.10(c)(1), 300.11(b)(1) and 300.50(b)(1).[3]

Based on the request's representation that Senator Corzine's donation of personal funds[4] will be made solely at his own discretion, without

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[1] *A transfer pursuant to 2 U.S.C. §439a(a)(4) and 11 CFR 113.2(c) is not subject to the contribution limitation in 2 U.S.C. §441a(a)(1)(D) or 11 CFR 110.1(c)(5). Such a transfer is also consistent with the regulations addressing office buildings of state or local party committees in 11 CFR 300.35.*

[1] *As defined at 11 CFR 100.24(a)(2), "voter registration activity" means contacting registered voters by phone, in person or by other individualized means to assist them in registering to vote. This activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms and helping them to fill out these forms.*

[2] *These rules generally provide that a national party committee and a federal candidate/officeholder may only solicit, receive, direct, transfer or spend funds in connection with an election for federal office—including funds for "federal election activity"—if those funds are federal funds that are subject to the limits, prohibitions and reporting requirements of the Act. See 2 U.S.C. §§441i(a) and (e)(1)(A). See also 11 CFR 100.24.*

[3] *In* McConnell v. Federal Election Commission, *540 U.S. __, 124 S.Ct. 619 at 658, 668, 679 (2003), the Supreme Court acknowledged that these provisions do not apply to officers acting in "their individual capacities."*

[4] *See 2 U.S.C. §431(26) and 11 CFR 300.33 for a definition of the term, "personal funds."*

express or implied authority from, or on behalf of, the DSCC, the Commission concluded that Senator Corzine would not be acting on behalf of the DSCC, and thus would not be restricted by the aforementioned provisions from donating unlimited personal funds to organizations that engage in voter registration activity, as defined in the federal election activity (FEA) provisions of Commission regulations. See 11 CFR 100.24(a)(2). If any of those organizations, however, qualifies as a political committee, his donations to it would be considered contributions subject to the same dollar limitations as any other individual (i.e., $5,000 per calendar year).

Status as Federal Candidate or Officeholder

The Act and Commission regulations similarly restrict federal candidates and officeholders in their ability to raise and spend funds in connection with an election for federal office. Specifically, the law and regulations stipulate that no federal candidate or officeholder shall solicit, receive, direct, transfer, spend or disburse funds in connection with an election for federal office, including funds for any FEA,[5] unless the funds consist of federal funds that are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. §441i(e)(1)(A); 11 CFR 300.61.

Unlike the restrictions regarding national party committees, the Act and regulations do not explicitly limit application of the restrictions to when such an individual is acting in his or her official capacity. The language of section 441i, however, is not clear as to whether the restrictions on the use of funds extend to the personal funds of federal candidates or officeholders, and there is no legislative history suggesting that Congress intended them to extend in such a way. Moreover, the underlying anti-corruption purposes of the section 441i restrictions, and their accompanying regulations, are not furthered by restricting such individuals from spending their personal funds solely at their own discretion, as opposed to funds that are solicited or received from others at the behest of the federal candidate or officeholder.

Because the funds Senator Corzine plans to donate would not be solicited or received from others, he would not incur an obligation toward any other person that would raise concerns regarding corruption or the appearance thereof. Thus, Senator Corzine may donate his personal funds in amounts exceeding the Act's limits to organizations that engage in FEA, irrespective of his status as a federal candidate or officeholder. In reaching this conclusion, the Commission assumes that Senator Corzine's donations to each organization will not be in amounts that are so large or comprise such a substantial percentage of the organization's receipts that the organization would be considered to be "financed" by Senator Corzine. See 2 U.S.C. §441i(e)(1); 11 CFR 300.61. Again, however, if any of those organizations qualifies as a political committee, his donations to it would be considered contributions subject to the same dollar limitations as any other individual (i.e., $5,000 per calendar year).

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—Dorothy Yeager

[5] *Under the Act, the term "federal election activity" includes "voter registration activity" that occurs during the period beginning 120 days before the date of a regularly scheduled federal election and ending on the date of the election. 2 U.S.C. §431(20); See 11 CFR 100.24(a)(2) and(b)(1).*

AO 2004-28
Disclosure of Donations to State Party Committee Nonfederal Office Building Fund

The Iowa Ethics and Campaign Disclosure Board (the Board) may require Iowa state party committees to disclose donors to the committees' nonfederal office building funds. The Federal Election Campaign Act (the Act) and Commission regulations now specifically allow a state to require the disclosure of donors to such funds. 2 U.S.C. §453 and 11 CFR 300.35.

Background

The Board administers the campaign finance laws in Iowa with regard to state and local elections. Both the Iowa Democratic and Republican parties have nonfederal office building funds. In AO 1998-8, the Commission concluded that the Act and Commission regulations preempted the Iowa state law that had sought to prohibit corporate donations to state party committee nonfederal office building funds. However, the Commission did not directly address the issue of whether federal law would also prohibit Iowa from requiring disclosure of building fund donations. In its request for AO 1998-8, the Iowa Democratic Party acknowledged the state's ability to regulate such disclosure under AO's 1997-14 and 1991-5.

Analysis

In the Bipartisan Campaign Reform Act of 2002, Congress amended the Act to provide that a state party may, subject to state law, use exclusively nonfederal funds for the purchase or construction of its office building. 2 U.S.C. §453. Consistent with this amendment to the Act, Commission regulations provide that if a state party committee uses nonfederal funds to purchase or construct its office building, then the sources, uses and disclosure of those funds are subject to state law

(so long as funds are not donated by foreign nationals). 11 CFR 300.35(a) and (b)(1). Thus, Iowa may require its state party committees to disclose donors to nonfederal office building funds. (In its AO request, the Board stated that it did not wish to prohibit corporate donations to state party nonfederal office building funds.)

Date Issued: September 9, 2004; Length: 3 pages.

—Amy Kort

AO 2004-34
State Party Status

The Libertarian Party of Virginia (the Party) satisfies the requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet three requirements. 11 CFR 100.14 and 100.15. It must:

- Be a political party that gained ballot access for at least one federal candidate who has qualified as a candidate under the Act;[1]
- Have bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level; and
- Be part of the official party structure.

The Libertarian Party of Virginia meets all three requirements. It satisfies the first requirement—ballot access for at least one federal candidate. Harry Browne appeared as the Party's candidate on the Virginia ballot in 2000, and he met the requirements for becoming a federal candidate under 2 U.S.C. §431(2).[2]

The Party satisfies the second requirement because its bylaws delineate activity commensurate with the day-to-day functions of a political party on the state level and are consistent with the state party rules of other political organizations that the Commission has found to satisfy this requirement for state committee status. *See* AOs 2003-27, 2002-10, 2002-6 and 2002-3. It is also an affiliate of the national Libertarian Party, which qualified for national committee status in 1975. *See* AO 1975-129.

Finally, as the Libertarian Party's state party organization in Virginia, the Party is part of the official party structure and, thus, meets the third requirement as well. *See* AOs 2004-9, 2003-27, 2002-6, 1997-7 and 1996-27. *See also* AOs 2002-10, 2002-6 and 2002-3.

Date Issued: October 21, 2004; Length: 4 pages.

—Amy Kort

AO 2004-40
Status of State Party as State Committee of Political Party

The Libertarian Party of Maryland (the Party) satisfies the requirements for state committee status.

The Federal Election Campaign Act (the Act) defines a state committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. §431(15). In order to achieve state committee status under Commission regulations, an organization must meet three requirements. 11 CFR 100.14 and 100.15. It must:

- Be a political party that gained ballot access for at least one federal candidate who has qualified as a candidate under the Act;[1]
- Have bylaws or a similar document that "delineates activities commensurate with the day-to-day operation" of a party at a state level; and
- Be part of the official party structure.

The Libertarian Party of Maryland meets all three requirements. It satisfies the first requirement—ballot access for at least one federal candidate. Harry Browne appeared as the Party's Presidential candidate on the Maryland ballot in 1996 and 2000, and he met the requirements for

[1] *Gaining ballot access for a federal candidate is an essential element for qualifying as a political party.* See *11 CFR 100.15.*

[2] *An individual becomes a candidate for the purposes of the Act once he or she receives contributions aggregating in excess of $5,000 or makes expenditures in excess of $5,000. 2 U.S.C. §431(2) and 11 CFR 100.3. The Commission has granted state committee status to a state affiliate of a qualified national party committee where its only federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. AOs 2004-9, 2002-3 and 1999-26.*

[1] *Gaining ballot access for a federal candidate is an essential element for qualifying as a political party. See 11 CFR 100.15.*

becoming a federal candidate under 2 U.S.C.§431(2).[2]

The Party satisfies the second requirement because its bylaws delineate activity commensurate with the day-to-day functions of a political party on the state level and are consistent with the state party rules of other political organizations that the Commission has found to satisfy this requirement for state committee status. It is also an affiliate of the Libertarian National Party, which qualified for national committee status in 1975. See AO 1975-129.

Finally, as the Libertarian Party's state party organization in Maryland, the Party is part of the official party structure and, thus, meets the third requirement as well. See AOs 2004-34, 2004-9, 2003-27 and 2002-10.

Date Issued: December 2, 2004; Length: 4 pages.

—*Amy Kort*

[2] *An individual becomes a candidate for the purposes of the Act once he or she receives contributions aggregating in excess of $5,000 or makes expenditures in excess of $5,000. 2 U.S.C. §431(2) and 11 CFR 100.3. The Commission has granted state committee status to a state affiliate of a qualified national party committee where its only federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. AOs 2004-34 and 2004-9.*

Contribution Limits

Contribution Limits for 2005-2006

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), certain contribution limits are indexed for inflation every two years, based on the change in the cost of living since 2001, which is the base year for adjusting these limits.[1] The new inflation-adjusted limits are:

- The limits on contributions made by persons to candidates and national party committees (2 U.S.C. §§441a(a)(1)(A) and (B));
- The biennial aggregate contribution limits for individuals (2 U.S.C. §441a(a)(3)); and
- The limit on contributions made to U.S. Senate candidates by certain political party committees (2 U.S.C. §441a(h)).

(See the chart on page 3 for the contribution limits applicable for 2005-2006.)

The inflation adjustments to these limits are made only in odd-numbered years, and—except for the biennial limit—the limits are in effect for the two-year election cycle beginning on the day after the general election and ending on the date of the next general election. The biennial limit covers the two-calendar-year period beginning on January 1 of the odd-numbered year and ending on December 31 of the even numbered year.

[1] *The applicable cost of living adjustment amount is 1.067.*

Please note, however, that these limits do not apply to contributions raised to retire debts from past elections. Contributions received to retire such debts may not exceed the contribution limits in effect on the date of the election for which those debts were incurred. 11 CFR 110.1(b)(3)(iii).

The BCRA also introduced a rounding provision for all of the amounts that are increased by the indexing for inflation.[2] Under this provision, if the inflation-adjusted amount is not a multiple of $100, then the amount is rounded to the nearest $100.

—*Amy Kort*

[2] *This provision also affects the indexing of coordinated party expenditure limits and Presidential expenditure limits. 2 U.S.C. §§441a(b) and 441a(d).*

Contribution Limits for 2005-06

Donors	Recipients				Special Limits
	Candidate Committee	PAC[1]	State, District and Local Party Committee[2]	National Party Committee[3]	
Individual	$2,100* per election[4]	$5,000 per year	$10,000 per year combined limit	$26,700* per year	Biennial limit of $101,400* ($40,000 to all candidates and $61,400[5] to all PACs and parties)
State, District and Local Party Committee	$5,000 per election combined limit	$5,000 per year combined limit	Unlimited transfers to other party committees		
National Party Committee	$5,000 per election	$5,000 per year	Unlimited transfers to other party committees		$37,300* to Senate candidate per campaign[6]
PAC Multicandidate[7]	$5,000 per election	$5,000 per year	$5,000 per year combined limit	$15,000 per year	
PAC Not Multicandidate	$2,100* per election[8]	$5,000 per year	$10,000 per year combined limit	$26,700* per year	

* These limits are indexed for inflation in odd-numbered years.

[1] These limits apply both to separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

[2] A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multicandidate committees only.

[3] A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates — see Special Limits column.

[4] Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

[5] No more than $40,000 of this amount may be contributed to state and local parties and PACs.

[6] This limit is shared by the national committee and the Senate campaign committee.

[7] A multicandidate committee is a political committee that has been registered for at least six months, has received contributions from more than 50 contributors and — with the exception of a state party committee — has made contributions to at least five federal candidates.

[8] A federal candidate's authorized committee(s) may contribute no more than $2,000 per election to another federal candidate's authorized committee(s). 2 U.S.C. §432(e)(3)(B).

Coordinated Party Expenditure Limits

2005 Coordinated Party Expenditure Limits

The 2005 coordinated party expenditure limits are now available. They are:

- $38,300 for House nominees;[1] and
- A range from $76,600 to $2,014,900 for Senate nominees, depending on each state's voting age population.

Party committees may make these special expenditures on behalf of their nominees in any 2005 general elections that may be held. National party committees have a separate limit for each nominee, but they share their limits with their national senatorial and congressional committees. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another party committee to make an expenditure against its limit. Local committees may only make coordinated party expenditures with advance authorization from another committee.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may

[1] *In states that have only one U.S. House Representative, the coordinated party expenditure limit for the House nominee is $76,600.*

Authority to Make Coordinated Party Expenditures on Behalf of House and Senate Nominees

National Party Committee	May make expenditures on behalf of House and Senate nominees. May authorize[1] other party committees to make expenditures against its own spending limits. Shares limits with national Congressional and Senatorial campaign committees.
State Party Committee	May make expenditures on behalf of House and Senate nominees seeking election in the committee's state. May authorize[1] other party committees to make expenditures against its own spending limits.
Local Party Committee	May be authorized[1] by national or state party committee to make expenditures against its limits.

Calculating 2005 Coordinated Party Expenditure Limits

	Amount	Formula
Senate Nominee	See table on page 12	The greater of: $20,000 x COLA or 2¢ x state VAP[2] x COLA[3]
House Nominee in States with Only One Representative	$76,600	$20,000 x COLA
House Nominee in Other States	$38,300	$10,000 x COLA
Nominee for Delegate or Resident Commissioner[4]	$38,300	$10,000 x COLA

[1] *The authorizing committee must provide prior authorization specifying the amount the committee may spend.*

[2] *VAP means voting age population.*

[3] *COLA means cost-of-living adjustment. The applicable COLA is 3.831.*

[4] *American Samoa, the District of Columbia, Guam and the Virgin Islands elect Delegates; Puerto Rico elects a Resident Commissioner.*

Coordinated Party Expenditure Limits for 2005 Special Election Senate Nominees

State	Voting Age Population (in thousands)	Expenditure Limit
Alabama	3,436	$263,300
Alaska*	467	$76,600
Arizona	4,197	$321,600
Arkansas	2,076	$159,100
California	26,297	$2,014,900
Colorado	3,423	$262,300
Connecticut	2,665	$204,200
Delaware*	637	$76,600
Florida	13,394	$1,026,200
Georgia	6,497	$497,800
Hawaii*	964	$76,600
Idaho	1,021	$78,200
Illinois	9,475	$726,000
Indiana	4,637	$355,300
Iowa	2,274	$174,200
Kansas	2,052	$157,200
Kentucky	3,166	$242,600
Louisiana	3,351	$256,800
Maine	1,035	$79,300
Maryland	4,163	$319,000
Massachusetts	4,952	$379,400
Michigan	7,579	$580,700
Minnesota	3,861	$295,800
Mississippi	2,153	$165,000
Missouri	4,370	$334,800
Montana*	719	$76,600
Nebraska	1,313	$100,600
Nevada	1,731	$132,600
New Hampshire*	995	$76,600
New Jersey	6,543	$501,300
New Mexico	1,411	$108,100
New York	14,655	$1,122,900
North Carolina	6,423	$492,100
North Dakota*	495	$76,600
Ohio	8,680	$665,100
Oklahoma	2,664	$204,100
Oregon	2,742	$210,100
Pennsylvania	9,569	$733,200
Rhode Island*	837	$76,600
South Carolina	3,173	$243,100
South Dakota*	580	$76,600
Tennessee	4,510	$345,600
Texas	16,223	$1,243,000
Utah	1,649	$126,300
Vermont*	487	$76,600
Virginia	5,655	$433,300
Washington	4,718	$361,500
West Virginia	1,431	$109,600
Wisconsin	4,201	$321,900
Wyoming*	390	$76,600

** In these states, which have only one U.S. House Representative, the spending limit for the House nominee is $76,600. In other states, the limit for each House nominee is $38,300.*

be made in consultation with the candidate, only the party committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables on pages 10 and 11 include:

- Information on which party committees have the authority to make coordinated party expenditures;
- The formula used to calculate the coordinated party expenditure limits; and
- A listing of the state-by-state coordinated party expenditure limits.

—Amy Kort

Regulations

Final Rules on Party Committees' Coordinated and Independent Expenditures

On October 28, 2004, the Commission approved final rules that remove restrictions placed on political party committees' ability to make both independent expenditures and coordinated party expenditures with respect to the same candidate in connection with a general election. The final rules also delete regulations prohibiting a political party committee that makes coordinated expenditures with respect to a candidate from transferring funds to, assigning coordinated expenditures authority to or receiving a transfer from a political party that has made or intends to make an independent expenditure with respect to that candidate.

The rules restricting party committee independent and coordinated expenditures were promulgated in January 2003 in order to implement section 213 of the Bipartisan Campaign Reform Act of 2002 (BCRA). However, in *McConnell v. FEC*, the Supreme Court found that section of the BCRA to be unconstitutional. Therefore, the Commission has removed the rules that implemented section 213.

The final rules and their Explanation and Justification were published in the November 3, 2004, *Federal Register* (69 FR 63919), and they are available on the FEC web site at *http://www.fec.gov/law/law_rulemakings.shtml*. These rules will take effect on December 3, 2004.

—*Amy Kort*

Final Rules on Contributions by Minors

On January 27, 2005, the Commission approved final rules regarding contributions and donations by minors to candidates and political committees. The rules, which will take effect on March 7, 2005, conform to the Supreme Court's decision in *McConnell v. FEC*. In that decision, the Court found unconstitutional a provision of the Bipartisan Campaign Reform Act (BCRA) that barred minors from making contributions to candidates or from making contributions or donations to political party committees.

The practical effect of the amended regulations is to return the rules to their pre-BCRA state. The final regulations provide that an individual under 18 years old may make contributions to candidates and party committees if:

- The decision to contribute is made knowingly and voluntarily by the minor;
- The funds, goods or services contributed are owned or controlled by the minor, such as income earned by the minor, proceeds from a trust for which he or she is a beneficiary, or funds withdrawn by the minor from a financial account opened and maintained in his or her name; and
- The contribution is not made from the proceeds of a gift given for the purpose of making the contribution and is not in any other way controlled by another individual.

11 CFR 110.19.

Note that the Commission has made one substantive change from the pre-BCRA regulations by removing the requirement that a minor "exclusively" own or control the funds, goods or services contributed. The Supreme Court reaffirmed in *McConnell v. FEC* that minors have a constitutional right to contribute to federal candidates and party committees. Maintaining the exclusivity requirement would have risked effectively precluding some minors from contributing their personal funds simply because they maintained their financial accounts in a place where an adult co-signatory was required for such accounts.

The final rules and their Explanation and Justification were published in the February 3, 2005, *Federal Register* (69 FR 5565) and are available on the FEC web site at *http://www.fec.gov/law/law_rulemakings.shtml*.

—*Amy Kort*